



Trial Court Tax Litigation Experience (Reported Cases)

CASE	PRINCIPAL ISSUE	STATUS/RESULT	MCDERMOTT LAWYER
<p><i>Palmolive Building Investors, LLC v. Commissioner</i>, 159 T.C. No. 4 (2019)</p>	<p>Whether the government complied with the supervisory approval requirement under section 6751 for the section 6662 penalty.</p>	<p>Court determined that supervisory approval requirement was met; trial on substantive merits for penalties scheduled for December 2019.</p>	<p>Andrew R. Roberson Roger J. Jones</p>
<p><i>ExxonMobil Asia Pacific Pte. Ltd. v. American Samoa Government</i> No. CA: 38-14 (High Ct. of American Samoa) (Order denying government's motion for reconsideration (Jan. 3, 2019)); Opinion and Order in taxpayer's favor (Aug. 10, 2018); Order granting taxpayer's motion to shift burden of proof and denying government's motion to bifurcate, August 17, 2015)</p>	<p>Whether government had burden of proof and whether taxpayer was engaged in a trade or business in a foreign jurisdiction; applicability of various penalties.</p>	<p>Taxpayer won; case on appeal.</p>	<p>Andrew R. Roberson Michael W. Weaver Sandra P. McGill Elizabeth P. Lewis</p>
<p><i>Illinois Tool Works, Inc. v. Commissioner</i> T.C. Memo. 2018-121</p>	<p>Whether a distribution received from foreign subsidiary is a nontaxable return of capital.</p>	<p>Taxpayer won.</p>	<p>Caroline H. Ngo Kevin Spencer Justin E. Jesse K. Christy Vouri-Misso</p>



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<p><i>United States v. BKD, LLP</i> No. 16-cv-09002-MC-MDH (W.D. Mo. 2017)</p>	<p>Whether certain documents were privileged and did not have to be produced in response to an IRS summons.</p>	<p>Magistrate Judge recommended non-disclosure of all documents; District Court ordered production of some documents and found other documents were privileged.</p>	<p>Andrew R. Roberson Damon M. Lyon</p>
<p><i>Schaeffler v. United States</i> 259 F.Supp.3d 518 (N.D. Tex. 2017)</p>	<p>Whether refund claim related to foreign tax credits was timely filed.</p>	<p>District court held that claim was not timely.</p>	<p>Mark P. Thomas Laura L. Gavioli</p>
<p><i>John M. Alterman Trust v. Commissioner</i> T.C. Memo 2015-231</p>	<p>Transferee liability case involving the sale of a family business.</p>	<p>Taxpayer won.</p>	<p>Denise M. Mudigere</p>
<p><i>Securitas Holdings, Inc. v. Commissioner</i> T.C. Memo. 2014-225</p>	<p>(1) Deductibility of interest expenses resulting from the refinancing of existing debt with a Deferred Subscription Agreement; and (2) the deductibility of certain captive insurance premiums.</p>	<p>Taxpayer won.</p>	<p>James A. Riedy Elizabeth A. Erickson Thomas M. Jones Justin E. Jesse</p>
<p><i>United States v. Dicker</i> No. 1:09-cr-0238-WHP (S.D.N.Y. 2014)</p>	<p>Judgment and sentencing decision regarding Vice-Chair of major accounting firm and co-head of its Tax Solutions Group, who was a cooperating witness.</p>	<p>Imprisonment of ten months; guideline range was thirty years to life.</p>	<p>Laura L. Gavioli</p>



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<p><i>Schaeffler v. United States</i> 22 F.Supp.3d 319 (S.D.N.Y. 2014) and 117 AFTR.2d 2016-2139 (S.D.N.Y. 2016)</p>	<p>Whether tax opinion and related documents are protected by attorney-client/tax practitioner privilege and the work product doctrine and whether IRS could withdraw summons and dismiss district court case.</p>	<p>Court held for government on both issue; decision regarding privilege reversed by Second Circuit and taxpayers had not obligation to turn over any documents</p>	<p>Mark P. Thomas Laura L. Gavioli</p>
<p><i>John Hancock Life Ins. Co. v. Commissioner</i> 141 T.C. 1 (2013)</p>	<p>Whether taxpayer was entitled to rent or depreciation and interest deductions on certain leveraged lease transactions.</p>	<p>Tax Court held primarily for the government; taxpayer won OID issue.</p>	<p>Kevin Spencer Justin E. Jesse</p>
<p><i>Peking Investment Fund, LLC v. Commissioner</i> T.C. Memo. 2013-288</p>	<p>Whether purported consents to extend the statute of limitations period were valid.</p>	<p>Tax Court held that issues of material fact remained for one consent and other consents were valid.</p>	<p>Laura L. Gavioli Denise M. Mudigere</p>
<p><i>Barnes Group, Inc. v. Commissioner</i> T.C. Memo. 2013-109</p>	<p>Whether taxpayer reasonably relied on the zero basis rule in Rev. Rul. 74-503 in determining the amount of its CFC's investment in U.S. property.</p>	<p>Tax Court held for the government.</p>	<p>James A. Riedy K. Christy Vouri-Misso</p>



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<p><i>Rawls Trading, L.P. v. Commissioner</i> 138 T.C. 271 (2012) and T.C. Memo. 2012-340</p>	<p>Whether Notice of Final Partnership Administrative Adjustment was valid and conferred jurisdiction on court for certain items; whether reasonable defense applied to penalty determination</p>	<p>Tax Court held that notice was invalid and did not confer jurisdiction for certain items; taxpayer successfully demonstrated reasonable cause and penalties did not apply</p>	<p>Laura L. Gavioli Mark. P. Thomas</p>
<p><i>Bausch & Lomb Inc. v. Commissioner</i> T.C. Memo. 2012-15 and T.C. Memo. 2009-112</p>	<p>Whether the IRS issued invalid notices of deficiency prior to the completion of related partnership proceedings.</p>	<p>Court ruled that the notices were invalid and dismissed the cases for lack of jurisdiction.</p>	<p>Roger J. Jones Andrew R. Roberson</p>
<p><i>Goodrich Corp. v. United States</i> 846 F.Supp.2d 445 (W.D.N.C. 2012)</p>	<p>Whether taxpayer could deduct interest expense relating to the transfer of property to a trust for the benefit of the IRS in satisfaction of a contested liability under section 461(f); whether taxpayer could deduct accrued minimum employer contributions.</p>	<p>District Court ruled in favor of the government on partial motion for summary judgment.</p>	<p>Elizabeth A. Erickson Kevin Spencer</p>
<p><i>Dorrance v. United States</i> 111 AFTR.2d 2013-1280 (D. Az. 2013)</p>	<p>Calculation of cost basis of stock received through demutualization.</p>	<p>District court held for the taxpayer.</p>	<p>Laura Gavioli</p>
<p><i>Ralphs Grocery Co. v. Commissioner</i> <i>Fred Meyer, Inc. v. Commissioner</i> T.C. Memo. 2011-25</p>	<p>Whether bankruptcy transaction satisfied requirements for a qualified stock purchase eligible for an election under Section 338(h)(10).</p>	<p>Taxpayer won.</p>	<p>Roger J. Jones Andrew R. Roberson</p>



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<i>Estate of Duncan v. Commissioner</i> T.C. Memo 2011-255	Deduction under section 2053 for administrative expenses and interest on loan used to pay estate tax.	Taxpayer won.	Carol A. Harrington Michael J. Sorrow
<i>Cummings v. United States</i> 2011 U.S. Dist. LEXIS 135645 (D. Mass. 2011)	Whether taxpayer was entitled to deduct the gross amount of its property tax liability.	Court held for the government.	Philip Tingle Andrew C. Liazos
<i>Wilmington Partners LP v. Commissioner</i> 2010 U.S. Tax Ct. Memo LEXIS 56, T.C. Memo. 2009-193, and 2008 U.S. Tax Ct. Memo LEXIS 306	(1) Whether Tax Court had jurisdiction over proposed adjustments to partnership items; (2) whether Treasury can issue regulations to overrule the judiciary; and (3) whether proposed adjustments to partnership items could lead to the assessment of any taxes.	Tax Court held for taxpayer on all issues.	Roger J. Jones Andrew R. Roberson
<i>Southgate Master Fund, LLC v. United States</i> 651 F.Supp.2d 596 (N.D. Tex. 2009)	Entitlement to losses and applicability of penalties.	Court held that losses were not allowable but that no penalties applied.	Laura L. Gavioli
<i>Capital One Financial Corp. v. Commissioner</i> 133 T.C. 136 (2009) and 130 T.C. 147 (2008)	Whether interchange income earned by credit card issuer was OID; whether OID calculator clearly reflected income; whether Treas. Reg. § 1.451-4 applied to taxpayer's rewards program; whether taxpayer changed its method of accounting for late fees.	Taxpayer won interchange issue; government won rewards issue and change in method issue; Tax Court modified calculator but held model was reasonable.	Elizabeth A. Erickson Kevin Spencer



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<p><i>United States v. Auffenberg</i> 102 A.F.T.R.2d 2008-6000, 2008 WL 4115997 (D.V.I. Aug. 26, 2008)</p>	<p>Whether some or all of the indictment should be dismissed on Fifth Amendment due process grounds because underlying tax statutes regarding bona fide residency in the U.S.V.I. were impermissibly vague.</p>	<p>Ten counts of indictment dismissed. Prior decision in same criminal case resulted in venue change to U.S.V.I.</p>	<p>Laura L. Gavioli</p>
<p><i>Comercial Waco, S.A. de C.V. v. United States</i> 98 AFTR 2d 2006-6735 & 98 AFTR 2d 2006-7317 (E.D. Tex. 2006)</p>	<p>Whether IRS could enforce third-party summons issued at request of Mexican Taxing Authority when request was arguably in excess of that permissible under U.S.-Mexico TIEA.</p>	<p>Summons enforced.</p>	<p>Laura L. Gavioli</p>
<p><i>Tribune Co. v. Commissioner</i> 125 T.C. 110 (2005) and T.C. Memo 2006-12</p>	<p>Whether “Times Mirror” and “Mosby” divestitures qualified as tax-free reorganizations under section 368.</p>	<p>Court held for government; settlement reached on appeal.</p>	<p>Roger J. Jones Andrew R. Roberson</p>
<p><i>Van Der Aa Investments, Inc. v. Commissioner</i> 125 T.C. 1 (2005)</p>	<p>Whether expert report was admissible under hearsay exception.</p>	<p>Court held that report was inadmissible hearsay; case settled.</p>	<p>Andrew R. Roberson</p>
<p><i>Acme Steel Co. v. Commissioner</i> T.C. Memo. 2003-118</p>	<p>Whether tentative refunds received by taxpayer were nonrebate refunds not taken into account in determine the taxpayer’s deficiency.</p>	<p>Tax Court held for the government.</p>	<p>Gregory G. Palmer</p>
<p><i>UnionBanCal Corp. v. Commissioner</i> 113 T.C. 309 (1999)</p>	<p>Whether taxpayer was entitled to a deduction for a deferred loss incurred during a related party transaction.</p>	<p>Tax Court held for the government.</p>	<p>Paul Dau</p>



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<i>The Limited, Inc. v. Commissioner</i> 113 T.C. 169 (1999)	Whether controlled foreign corporation's purchase of CDs from affiliated credit card bank failed to qualify as section 956(b)(2)(A) "deposit with a person carrying on a banking business."	Tax Court held for the government; decision reversed on appeal.	Roger J. Jones
<i>United Parcel Serv. of Am. v. Commissioner</i> T.C. Memo. 1999-268	Whether UPS's transfer of package insurance program to offshore affiliate should be respected on substance-form grounds.	Tax Court held for the government; decision reversed on appeal.	Roger J. Jones
<i>United States v. Farm Credit Services of Fargo, ACA</i> 89 AFTR.2d 2002-334 (D.C.N.D. 1998)	In a nationwide test case, whether agricultural credit associations were exempt from income tax on their mortgage lending income.	Taxpayer won.	Michael R. Fayhee Kevin J. Feeley
<i>Bank America Corp. v. Commissioner</i> 109 T.C. 1 (1997)	Whether taxpayer was entitled to refund of overpaid interest under section 7481(c).	Taxpayer won.	Roger J. Jones
<i>Amdahl Corp. v. Commissioner</i> 108 T.C. 507 (1997)	Whether payments made by corporation to relocation services companies in connection with purchase and resale of employee's homes were deductible.	Taxpayer won.	Paul Dau



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<p><i>Estate of Brown v. Commissioner</i> T.C. Memo 1997-195</p>	<p>Determination of the value and number of shares at death of the estate of the founder and a former minority owner of the Cincinnati Bengals.</p>	<p>All valuation issues were settled favorably before trial at values opined by taxpayer's experts; Tax Court ruled in favor of the taxpayer on the remaining issues.</p>	<p>Carol A. Harrington</p>
<p><i>Great Northern Nekoosa Corp. v. Commissioner</i> T.C. Memo 1997-409</p>	<p>Taxpayer claimed that a 1981 transaction (involving reciprocal put and call options) was a completed sale in 1981 so that a portion of a payment in 1989 pursuant to an exercise of the put option was deductible as unstated interest under section 483.</p>	<p>Tax Court held for the government.</p>	<p>Philip A. McCarty</p>
<p><i>Fort Howard Corp. v. Commissioner</i> 107 T.C. 187 (1996)</p>	<p>The case originally involved claimed deductions for borrowing costs incurred during the 1988 leveraged buyout of Fort Howard Corp. led by Morgan Stanley.</p>	<p>Congress enacted legislation in 1996 that resolved all deductions in the taxpayer's favor.</p>	<p>Lonn W. Myers</p>
<p><i>Nestle Holdings, Inc. v. Commissioner</i> T.C. Memo. 1995-441</p>	<p>Valuation of trademarks related to Carnation acquisition; whether loan from Swiss parent to U.S. acquisition subsidiary was debt for tax purposes.</p>	<p>Tax Court held for the government on trademark valuation and for taxpayer on debt-equity issue; holding in favor of government reversed on appeal.</p>	<p>Roger J. Jones</p>



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<p><i>Farm Credit Services of Northwest North Dakota v. Commissioner</i> T.C. Memo. 1995-436</p>	Whether section 277 applied to production credit associations.	Taxpayer won.	George W. Benson
<p><i>Seagate Technology, Inc. v. Commissioner</i> 102 T.C. 149 (1994)</p>	Section 482 reallocations relating to property manufactured outside the United States.	Tax Court sustained only approximately 28% of proposed income reallocations.	Roger J. Jones
<p><i>National Semiconductor Corp. v. Commissioner</i> T.C. Memo. 1994-195</p>	Section 482 reallocations relating to property manufactured outside the United States.	Tax Court sustained only approximately 20% of proposed income reallocations.	Roger J. Jones
<p><i>Buckeye Countrymark, Inc. v. Commissioner</i> 103 T.C. 547 (1994)</p>	Whether section 277 applied to non-exempt Subchapter T cooperatives; this case was sponsored by the National Council of Farmer Cooperatives as a test case on this issue.	Taxpayer won.	George W. Benson
<p><i>Meredith Corp. v. Commissioner</i> 102 T.C. 406 (1994)</p>	Taxpayer claimed a substantial value for the acquired subscriber list of The Ladies Home Journal; IRS disallowed its amortization deduction, claiming a zero value for the subscriber list.	Taxpayer won.	Gary C. Karch Lydia R.B. Kelley
<p><i>Walgreen, Inc. v. United States</i> 103 T.C. 582 (1994) and T.C. Memo 1996-374</p>	Recovery period of cost of nonstructural section 1250 real property.	Tax Court ultimately ruled on categories of disputed property.	Lydia R.B. Kelley



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<i>Sara Lee Corp. v. United States</i> 29 Fed. Cl. 300 (1993)	Use of Revenue Agent's Report as evidence supporting audit adjustments.	Government won on evidentiary issue; case settled.	Roger J. Jones
<i>Westreco, Inc. v. Commissioner</i> T.C. Memo. 1992-561	Reallocation of income relating to food research activities between foreign parent corporation and U.S. subsidiary.	Tax Court sustained none of the proposed income reallocations.	Roger J. Jones
<i>Tele-Communications, Inc. v. Commissioner</i> T.C. Memo. 1991-82	Inclusion of interim period E&P for purposes of section 334(b)(2) (R.M. Smith issue).	Taxpayer won.	Roger J. Jones
<i>Continental Ill. Corp. v. Commissioner</i> T.C. Memo. 1991-66, T.C. Memo. 1989-636, T.C. Memo. 1989-468, and T.C. Memo. 1988-318	Brazilian foreign tax credits, foreign tax credits related to net quoted loans, and recognition of income on CAP loans.	Tax Court held in government's favor; holdings in favor of government reversed on appeal.	Roger J. Jones
<i>Tele-Communications, Inc. v. Commissioner</i> 95 T.C. 495 (1990)	Application of section 1253 to cable television franchises.	Taxpayer won.	Roger J. Jones
<i>Continental Ill. Corp. v. Commissioner</i> 94 T.C. 165 (1990)	Whether losses claimed in connection with holdings in nationalized Iranian banks could be deducted.	Taxpayer won.	Roger J. Jones



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<i>Westreco, Inc. v. Commissioner</i> T.C. Memo. 1990-501	Protective order to restrict IRS use of summons in Tax Court.	Tax Court held for taxpayer.	Roger J. Jones
<i>Nissho Iwai Corp. v. Commissioner</i> 89 T.C. 765 (1987) <i>Amicus Curiae</i>	Whether foreign tax credits claimed for Brazilian withholding taxes must be reduced by amount of Brazilian subsidy to borrowers.	Tax Court held for the government.	Roger J. Jones
<i>Illinois Grain Corp. v. Commissioner</i> 87 T.C. 435 (1986)	Whether certain interest and rental income earned by the taxpayer was patronage-sourced income and thus could be included in the cooperative's patronage dividend deduction.	Taxpayer won.	George W. Benson
<i>Cotter & Co. v. United States</i> 54 AFTR.2d 84-5892 (Cl. Ct. 1984)	Whether interest income from commercial papers and certificates of deposit and income accruing from the rental of warehouse space were earnings from business done with and for patrons of a cooperative under section 1388.	Court held for the government; decision reversed on appeal.	George W. Benson
<i>St. Louis Bk. for Cooperatives v. United States</i> 624 F.2d 1041 (Ct. Cl. 1980)	Whether three items of taxpayer's income were patronage sourced income under section 1382(b) and therefore deductible from gross income.	Taxpayer won.	George W. Benson



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<i>Randolph v. Commissioner</i> 67 T.C. 481 (1976)	Whether taxpayers were entitled to medical expense deductions for added cost of special organic foods to alleviate their allergic reactions to chemically treated or packaged foods.	Taxpayer won.	George W. Benson
<i>Whiteco Industries, Inc. v. Commissioner</i> 65 T.C. 664 (1975)	Whether taxpayer's outdoor advertising signs qualified for the investment tax credit.	Taxpayer won.	George W. Benson



Trial Court Tax Litigation Experience (Pending/Settled Cases)

CASE	PRINCIPAL ISSUE	STATUS/RESULT	MCDERMOTT LAWYER
<i>Heiting v. United States</i> , No. 19-cv-224 (W.D. Wisc.)	Claim of right doctrine.	Pending.	David A. Baker Andrew R. Roberson Jared R. Cloud Hallie Ritzu
<i>Prime Healthcare Svcs. – Montclair LLC v. Commissioner</i> , Tax Court No. 6712-19	Unreported income issue.	Pending	Kevin Spencer
<i>YP LLC Partnership v. Commissioner</i> Tax Court Nos. 23295-18 and 34101-18	Section 199 “contract manufacturing” issue.	Pending.	Kevin Spencer
<i>PDV Holding, Inc. v. Commissioner</i> Tax Court No. 22643-18	Tax accounting issue.	Pending.	Kevin Spencer
<i>Hoops, LP v. Commissioner</i> Tax Court No. 11308-18	Whether partnership is entitled to additional deductions for salaries and wages related to assumption of deferred compensation liability.	Pending.	Andrew R. Roberson Kevin J. Feeley
<i>DiBenedetto v. Commissioner</i> Tax Court Nos. 25300-17 and 25297-17	Whether transfers were loans or disguised gifts, section 529 issues, and applicability of penalties.	Pending.	Roger J. Jones Andrew R. Roberson



Trial Court Tax Litigation Experience (Pending/Settled Cases)

CASE	PRINCIPAL ISSUE	STATUS/RESULT	MCDERMOTT LAWYER
<p><i>United States v. Katholos</i> No. 1:17-cv-531 (W.D.N.Y.)</p> <p><i>Katholos v. Commissioner</i> Tax Court No. 19011-16</p>	<p>Whether taxpayer acted willfully and with intent to defraud for purposes of the FBAR penalty and section 6663 civil fraud penalty regarding foreign accounts held at UBS in Switzerland.</p>	<p>Pending.</p>	<p>Laura L. Gavioli</p>
<p><i>Growmark, Inc. v. Commissioner</i> Tax Court Nos. 9076-17 and 23797-14</p>	<p>Computation and use of the domestic production activities deduction under section 199 by Subchapter T cooperative; whether refundable alcohol fuel and biodiesel mixture excise tax credits that are used to reduce excise tax liability must be included in taxable income.</p>	<p>Pending; trial held in Dkt. No. 23797-24 in December 2015.</p>	<p>George W. Benson Andrew R. Roberson</p>
<p><i>Uxbridge Solar LLC v. United States</i> Federal Claims Court No. 1:17-cv-00695-CFL</p>	<p>Payment of the correct amount of cash grants mandated by Section 1603 of the American Recovery and Reinvestment Tax Act of 2009.</p>	<p>Pending.</p>	<p>Kevin Spencer</p>
<p><i>CTC MA I, LLC v. United States</i> Federal Claims Court No. 1:17-cv-00498-LKG</p>	<p>Payment of the correct amount of cash grants mandated by Section 1603 of the American Recovery and Reinvestment Tax Act of 2009.</p>	<p>Pending.</p>	<p>Kevin Spencer</p>
<p><i>Kleen Tech Solutions, LLC v. United States</i> Federal Claims Court No. 1:17-cv-00999-SGB</p>	<p>Payment of the correct amount of cash grants mandated by Section 1603 of the American Recovery and Reinvestment Tax Act of 2009.</p>	<p>Pending.</p>	<p>Kevin Spencer</p>



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<i>Sheoris v. Commissioner</i> Tax Court No. 012240-16	Whether the IRS properly adjusted taxpayer's flow-through items from numerous Schedules K-1.	Settled.	Laura L. Gavioli
<i>3F Administracao de Recursos Ltda. n.k.a. Gavea Investimentos Ltda., Arminio Fraga v. Commissioner</i> Tax Court No. 8583-16	Whether gain on sale of private equity and hedge fund management company is ordinary income under a section 751(c) hot asset theory.	Settled.	Mark P. Thomas
<i>Anonymous v. Commissioner</i> Tax Court 2017	Filed petition to restrain disclosure of Chief Counsel Advice in order to protect client confidentiality.	Settled.	Andrew R. Roberson Elizabeth A. Erickson
<i>Davis v. Commissioner</i> Tax Court No. 25866-15	Determination of share of partnership income and losses; penalties.	Settled.	Roger J. Jones Andrew R. Roberson Jonathan D. Lockhart
<i>ENSCO International Inc. v. Commissioner</i> Tax Court No. 11648-15	Proposed adjustments to capital accounts under Section 482 and 704; valuation of offshore drilling rigs.	Settled.	Andrew R. Roberson
<i>Beal v. Commissioner</i> Tax Court No. 031354-15 <i>BPB Investments LC v. Commissioner</i> Tax Court No. 031353-15	Whether taxpayers were entitled to business deductions related to litigation of TEFRA partnership cases.	Settled; included written apology from IRS to taxpayer related to improper collection activities.	Laura L. Gavioli



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CASE	PRINCIPAL ISSUE	STATUS/RESULT	MCDERMOTT LAWYER
<i>FWOOD, LLC v. Commissioner</i> Tax Court No. 017691-14	TEFRA partnership litigation related to investment in foreign distressed debt.	Settlement pending.	Laura L. Gavioli
<i>Fluor Corp. v. Commissioner</i> Tax Court No. 26258-14	Proposed Section 482 allocation; characterization of related party payments as U.S. or foreign source income.	Government conceded.	Andrew R. Roberson
<i>Ag Processing, Inc. v. Commissioner</i> Tax Court No. 23479-14	Computation and use of the domestic production activities deduction under section 199 by a Subchapter T cooperative; whether refundable biodiesel and alternative fuel mixture excise tax credits that are refunded must be included in taxable income.	Pending; IRS conceded excise tax issue; trial held May 2016 on section 199 issues.	George W. Benson Andrew R. Roberson
<i>Palmolive Building Investors, LLC v. Commissioner</i> Tax Court No. 23444-14	Applicability of penalties related to façade easement donation.	Pending.	Roger J. Jones Andrew R. Roberson
<i>Anonymous v. Commissioner</i> Tax Court 2014	Filed petition to restrain disclosure of Chief Counsel Advice in order to protect client confidentiality.	Settled.	Andrew R. Roberson



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<p><i>Southgate Master Fund, LLC v. United States</i> Nos. 3:07-cv-02104, 3:12-cv-02824, 3:12-cv-04480, and 3:13-cv-03634 (N.D. Tex)</p>	Series of related cases with over \$300 million at issue: \$150 million refund and claim by IRS for \$150 million of additional liability.	At completion of discovery, DOJ conceded issues, IRS agreed to close open examination, and refunds in 2016 totaled more than \$225 million.	Laura L. Gavioli
<p><i>Montgomery v. Commissioner</i> Tax Court No. 8193-13</p>	Whether documents entitled “Notice of Deficiency” that did not determine any deficiency was valid and conferred jurisdiction on the Tax Court.	Tax Court held that document was not a valid notice of deficiency.	Laura L. Gavioli
<p><i>DiMare, Inc. v. Commissioner</i> Tax Court No. 24396-13</p>	Deduction for management fees paid by closely-held company.	Settled.	Kevin Spencer K. Christy Vouri-Misso
<p><i>Davidson v. Commissioner</i> Tax Court No. 17166-13.</p>	Whether gifts addressed in Notice of Deficiency represent gifts made by Petitioner’s deceased husband.	Settled.	David A. Baker
<p><i>Caterpillar Inc. v. Commissioner</i> Tax Court No. 10790-13</p>	Allocation of royalty income under section 482.	Settled.	Lonn W. Myers Gregory G. Palmer
<p><i>Old UGC, Inc. v Commissioner</i> Tax Court No. 6302-13</p>	Whether taxpayer is entitled to ordinary losses for bad debts.	Settled.	Roger J. Jones Andrew R. Roberson



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<i>CLIPT, LLC v. United States</i> No. 3:2011-cv-02015 (D.P.R.)	TEFRA partnership litigation related to investment in Brazilian distressed debt.	Settled, following extensive discovery.	Laura L. Gavioli
<i>Koenigsberger v. Commissioner</i> Tax Court Nos. 12537-10 & 12538-10 <i>Johnston v. Commissioner</i> Tax Court Nos. 12539-10 & 12540-10	In partner-level deficiency action, whether the Tax Court has jurisdiction over taxpayers' arguments for consistent settlement under section 6224 when the issue was not decided in the related partnership proceeding.	Pending.	Laura L. Gavioli
<i>Estate of Leighton v. Commissioner</i> Tax Court No. 11447-10	Fair market value of decedent's interest in a marital deduction trust.	Settled.	David A. Baker
<i>CCW LaJolla, LLC v. Commissioner</i> Tax Court No. 7385-10 <i>Aventura Associates, LLC v. Commissioner</i> Tax Court No. 7384-10 <i>CC-Development Group, Inc. v. Commissioner</i> Tax Court Nos. 7382-10 and 7383-10	Whether repayable entrance fee payments received by retirement communities were includable in income in the year of receipt; applicability of penalties.	Government conceded all four cases in its Answers.	Roger J. Jones Andrew R. Roberson



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CASE	PRINCIPAL ISSUE	STATUS/RESULT	MCDERMOTT LAWYER
<p><i>United Services Automobile Assoc. v. United States</i> No. 10-cv-00185 (W.D. Tex. 2010)</p> <p><i>United Services Automobile Assoc. v. Commissioner</i> No. 021037-10 (Tax Court 2010)</p>	Whether interchange income earned by credit card issuer is OID; whether OID calculator clearly reflects income; whether taxpayer changed its method of accounting for OID.	Settled.	Elizabeth A. Erickson
<p><i>Roche Holdings, Inc. v. United States</i> No. 09-cv-5463 (D. N.J. 2009)</p>	Whether in computing the research credit under section 41, receipts received from intra-group transactions between foreign and domestic members of a controlled group of corporations are properly excluded.	Government conceded legal issue.	Kevin Spencer
<p><i>SN LaGuardia Partners v. Commissioner</i> Tax Court Nos. 4987-07 & 4906-07</p>	Whether an understatement of income resulting from an overstatement of basis is an omission from gross income for purposes of the 6-year statute of limitations.	Taxpayer won; Government conceded and dismissed Second Circuit appeal following Supreme Court decision in <i>Home Concrete</i> .	Laura L. Gavioli
<p><i>Comcast MO Group, Inc. v. Commissioner</i> Tax Court No. 6957-07</p>	Whether \$1.5 billion payment to terminate merger was a deductible expense or a capital expenditure.	Settled.	Roger J. Jones Andrew R. Roberson
<p><i>Olazabal v. Commissioner</i> Tax Court No. 28389-07</p>	Taxpayer, a foreign professional tournament golfer, challenged underpayments of tax on tournament and endorsement income.	Settled.	John T. Lutz



Trial Court Tax Litigation Experience (Pending/Settled Cases)

CASE	PRINCIPAL ISSUE	STATUS/RESULT	MCDERMOTT LAWYER
<i>Associated Banc-Corp. v. Commissioner</i> Tax Court No. 18773-06	Whether investments held by bank's wholly owned subsidiary should be treated as held by the bank for purposes of sections 265 and 291.	Government conceded.	Roger J. Jones Andrew R. Roberson
<i>Mary Kay Holding Corp. v. Commissioner</i> Tax Court No. 18150-02	Whether taxpayer could deduct amounts paid to its CFCs under section 162; alternatively, whether taxpayer properly reported its true taxable income as required by section 482.	Settled.	Elizabeth A. Erickson
<i>Anonymous v. Commissioner</i> Tax Court	Filed petition to restrain disclosure of a Field Service Advice in order to protect client confidentiality.	Settled.	Elizabeth A. Erickson
<i>Comcast Corporation v. Commissioner</i> Tax Court No. 10983-99	Application of section 83 to warrants issued in public LBO.	Settled.	Roger J. Jones
<i>York Farm Credit, ACA v. Commissioner</i> Tax Court No. 022296-97	Whether amounts received in redemption of purchased stock and the redemption of pre-1969 patronage allocations were taxable.	Settled.	George W. Benson Michael R. Fayhee Kevin J. Feeley
<i>TCI Communications, Inc. v. Commissioner</i> Tax Court Nos. 18317-95 and 22785-95	Application of ITC transition rules, proper treatment of Make Ready Costs, and amortization of intangible assets.	Settled.	Roger J. Jones



Trial Court Tax Litigation Experience (Pending/Settled Cases)

CASE	PRINCIPAL ISSUE	STATUS/RESULT	MCDERMOTT LAWYER
<p><i>WestMarc Communications v. Commissioner</i> Tax Court No. 22433-94</p>	Application of ITC transition rules.	Settled.	Roger J. Jones
<p><i>Farm Credit Services of Southwest Minn. v. Commissioner</i> Tax Court No. 2917-93</p>	Whether a production credit association was entitled to carry losses back pursuant to section 172; whether a 1985 bad debt reserve addition was appropriate.	Settled.	George W. Benson
<p><i>Select Sires, Inc. v. Commissioner</i> No. 8589-93 (Tax Ct. filed Apr. 30, 1993). <i>AG Processing, Inc. v. Commissioner</i> Tax Court No. 18154-92</p>	Whether a nonexempt cooperative is entitled to a section 245(c) dividends-received deduction for dividends from its foreign sales corporation.	Government conceded.	George W. Benson
<p><i>Tele-Communications, Inc. v. Commissioner</i> Tax Court No. 25598-92</p>	Proper treatment of Make Ready Costs.	Settled.	Roger J. Jones
<p><i>Cablevision Associates VI v. Commissioner</i> Tax Court Nos. 3036-90 and 3037-90 <i>Heritage Cablevision Associates v. Commissioner</i> Tax Court No. 3038-90 <i>Heritage Communications, Inc. v. Commissioner</i> Tax Court No. 4640-90</p>	Amortization of cable television franchises, Prop. Treas. Reg. § 1.168-2(f) depreciation adjustment, and TEFRA partnership issues.	Settled.	Roger J. Jones



Trial Court Tax Litigation Experience (Pending/Settled Cases)

CASE	PRINCIPAL ISSUE	STATUS/RESULT	MCDERMOTT LAWYER
<i>Tele-Communications, Inc. v. Commissioner</i> Tax Court No. 3172-90	Amortization of cable franchise costs and acquisition related issues.	Settled.	Roger J. Jones



Appellate Court Tax Litigation Experience

Federal Circuit

CASE	PRINCIPAL ISSUE	STATUS/RESULT	MCDERMOTT LAWYER
<i>Grapevine Imports, Ltd. v. United States</i> 636 F.3d 1368 (Fed. Cir. 2011)	Whether an understatement of income resulting from an overstatement of basis is an omission from gross income for purposes of the 6-year statute of limitations.	Federal Circuit held in government's favor; Supreme Court vacated and remanded and decision entered for taxpayer.	Laura Gavioli Roger J. Jones (<i>amicus</i>) Andrew R. Roberson (<i>amicus</i>)
<i>Cotter & Co. v. United States</i> 56 AFTR.2d 85-5359 (Fed. Cir. 1985)	Whether interest income from commercial papers and certificates of deposit and income accruing from the rental of warehouse space were earnings from business done with and for patrons of a cooperative under section 1388.	Federal Circuit reversed trial court's decision and held in favor of the taxpayer.	George W. Benson



Appellate Court Tax Litigation Experience

Second Circuit

CASE	PRINCIPAL ISSUE	STATUS/RESULT	MCDERMOTT LAWYER
<p><i>Schaeffler v. United States</i> 806 F.3d 34 (2d Cir. 2015) and 696 Fed.Appx. 542 (2d Cir. 2017)</p>	<p>Whether tax opinion and related documents are protected by attorney-client/tax practitioner privilege and the work product doctrine and whether IRS could withdraw summons and dismiss district court case.</p>	<p>Second Circuit held that attorney-client privilege was not waived and IRS summons sought materials protected by the work product doctrine; Second Circuit held that case was moot after IRS had withdrawn summons and taxpayers was not obliged to turn over any documents.</p>	<p>Mark P. Thomas Laura L. Gavioli</p>
<p><i>Wilmington Partners LP v. Commissioner</i> 495 Fed.Appx. 173 (2d Cir. 2012)</p>	<p>(1) Whether Tax Court had jurisdiction over proposed adjustments to partnership items; (2) whether Treasury can issue regulations to overrule the judiciary; and (3) whether proposed adjustments to partnership items could lead to the assessment of any taxes.</p>	<p>Tax Court held for taxpayer on all issues. Second Circuit affirmed in part and remanded for clarification on third issue.</p>	<p>Roger J. Jones Andrew R. Roberson</p>
<p><i>Bausch & Lomb, Inc. v. Commissioner</i> 410 Fed.Appx. 367 (2d Cir. 2010)</p>	<p>Whether the IRS issued an invalid notice of deficiency prior to the completion of related partnership proceedings.</p>	<p>Tax Court ruled that the notice was invalid and dismissed the case for lack of jurisdiction; Second Circuit dismissed appeal on ripeness grounds.</p>	<p>Roger J. Jones Andrew R. Roberson</p>



Appellate Court Tax Litigation Experience

CASE	PRINCIPAL ISSUE	STATUS/RESULT	MCDERMOTT LAWYER
<i>Nestle Holdings, Inc. v. Commissioner</i> 152 F.3d 83 (2d Cir. 1998)	Valuation of trademarks related to Carnation acquisition; whether loan from Swiss parent to U.S. acquisition subsidiary was debt for tax purposes.	Second Circuit reversed Tax Court's holding favorable to the government on trademark valuation and affirmed its taxpayer-favorable holding on debt-equity question.	Roger J. Jones
<i>General Signal Corp. v. Commissioner</i> 142 F.3d 546 (2d Cir. 1998)	Whether deductions were proper on VEBA trust contributions under section 419(A)(c)(2).	Second Circuit affirmed Tax Court's decision in favor of the government.	Gregory G. Palmer
<i>Rogers v. Commissioner</i> 751 F.2d 370 (2d Cir. 1984)	Proper method for valuing standing timber.	Second Circuit affirmed Tax Court's decision in favor of the government.	Roger J. Jones



Appellate Court Tax Litigation Experience

Fourth Circuit

CASE	PRINCIPAL ISSUE	STATUS/RESULT	MCDERMOTT LAWYER
<i>Capital One Financial Corp. v. Commissioner</i> 659 F.3d 316 (4th Cir. 2011)	Whether interchange income earned by credit card issuer is OID; whether OID calculator clearly reflected income; whether Treas. Reg. § 1.451-4 applies to taxpayer's rewards program; whether taxpayer changed its method of accounting for late fees.	Taxpayer won interchange issue; government won rewards issue and change in method issue; Tax Court modified calculator but held model was reasonable. Fourth Circuit affirmed.	Elizabeth A. Erickson Kevin Spencer
<i>Home Concrete & Supply, LLC v. United States</i> 634 F.3d 249 (4th Cir. 2011) <i>Amicus Curiae</i>	Whether an understatement of income resulting from an overstatement of basis is an omission from gross income for purposes of the 6-year statute of limitations.	Fourth Circuit reversed district court and held in taxpayer's favor; Supreme Court affirmed.	Roger J. Jones Andrew R. Roberson



Appellate Court Tax Litigation Experience

Fifth Circuit

CASE	PRINCIPAL ISSUE	STATUS/RESULT	MCDERMOTT LAWYER
Schaeffler v. United States 889 F.3d 238 (5th Cir. 2018)	Whether refund claim related to foreign tax credits was timely filed.	Fifth Circuit held that claim was not timely.	Mark P. Thomas Laura L. Gavioli
Bemont Investments, L.L.C. v. United States 679 F.3d 339 (2012)	Whether district court properly determined Notice of Final Partnership Administrative Adjustment was untimely, a 40% valuation misstatement penalty did not apply, and a 20% negligence penalty applied.	The Fifth Circuit reversed the district court's decision on the timeliness of the notice and affirmed the remainder of the decision.	Laura L. Gavioli
Southgate Master Fund, LLC v. United States 659 F.3d 466 (5th Cir. 2011)	Entitlement to losses and applicability of penalties.	Fifth Circuit affirmed district court holding that losses were not allowable and no penalties applied.	Laura L. Gavioli
Conway v. United States 647 F.3d 228 (5th Cir. 2011)	Liability of taxpayer under section 6672 for excise taxes that corporation collected and failed to pay over to United States.	Fifth Circuit affirmed district court decision in favor of the government.	Laura L. Gavioli
Burks v. United States Commissioner v. M.I.T.A. Partners 633 F.3d 347 (5th Cir. 2011)	Whether an understatement of income resulting from an overstatement of basis is an omission from gross income for purposes of the 6-year statute of limitations.	Fifth Circuit held in taxpayer's favor; Supreme Court denied petition for certiorari.	Laura L. Gavioli Roger J. Jones (<i>amicus</i>) Andrew R. Roberson (<i>amicus</i>)



Appellate Court Tax Litigation Experience

Sixth Circuit

CASE	PRINCIPAL ISSUE	STATUS/RESULT	MCDERMOTT LAWYER
<i>Banks II v. Commissioner</i> 345 F.3d 373 (6th Cir. 2003)	Whether a portion of a money judgment or settlement paid to a plaintiff's attorney was income to the plaintiff.	Sixth Circuit held in taxpayer's favor; Supreme Court reversed.	Roger J. Jones
<i>The Limited, Inc. v. Commissioner</i> 286 F.3d 324 (6th Cir. 2002)	Whether controlled foreign corporation's purchase of CDs from affiliated credit card bank failed to qualify as section 956(b)(2)(A) "deposit with a person carrying on a banking business."	Sixth Circuit reversed Tax Court and held in taxpayer's favor.	Roger J. Jones
<i>Westreco, Inc. v. Commissioner</i> 923 F.2d 855 (6th Cir. 1991)	Protective order to restrict IRS use of summons in Tax Court.	Tax Court held for taxpayer; Sixth Circuit dismissed appeal and denied writ of mandamus.	Roger J. Jones



Appellate Court Tax Litigation Experience

Seventh Circuit

CASE	PRINCIPAL ISSUE	STATUS/RESULT	MCDERMOTT LAWYER
<i>Rand v. Commissioner</i> No. 14-1753 (7th Cir. 2014)	Whether the phrase “amount shown as the tax by the taxpayer on his return” includes, as a negative amount, the sum of any disallowed tax credits for purposes of the section 6662(a) penalty.	Taxpayer won in Tax Court; case dismissed with prejudice by Seventh Circuit.	Andrew R. Roberson Roger J. Jones
<i>Harbin v. Commissioner</i> No. 14-1753 (7th Cir. 2012)	Whether taxpayer was barred by res judicata and, if not, whether he was entitled to relief from joint and several liability.	Taxpayer won in Tax Court; case dismissed with prejudice by Seventh Circuit.	Andrew R. Roberson
<i>Tribune Co. v. Commissioner</i> No. 06-3482 (7th Cir. 2006)	Whether “Times Mirror” and “Mosby” divestitures qualified as tax-free reorganizations under section 368.	Tax Court held for government; settlement reached on appeal.	Roger J. Jones Andrew R. Roberson
<i>United States v. Northern Trust Co.</i> 372 F.3d 886 (7th Cir. 2004)	Action to recover tax refunds paid for the benefit of pension fund mutual fund investors.	Taxpayer won at trial level when the government’s case was dismissed for failure to state a claim; Seventh Circuit remanded.	Jeffrey E. Stone
<i>Fruit of the Loom, Inc. v. Commissioner</i> 72 F.3d 1338 (7th Cir. 1996)	Whether the mitigation provisions applied to permit IRS to deny deductions in closed years.	Seventh Circuit affirmed Tax Court’s decision in the taxpayer’s favor.	Roger J. Jones



Appellate Court Tax Litigation Experience

CASE	PRINCIPAL ISSUE	STATUS/RESULT	MCDERMOTT LAWYER
<i>Cline v. Commissioner</i> 34 F.3d 480 (7th Cir. 1994)	Golden parachute payments.	Seventh Circuit affirmed Tax Court's decision in the government's favor.	Roger J. Jones
<i>Continental Ill. Corp. v. Commissioner</i> 998 F.2d 513 (7th Cir. 1993)	Brazilian foreign tax credits, foreign tax credits related to net quoted loans, and recognition of income on CAP loans.	Seventh Circuit affirmed Tax Court's holdings in favor of the government on the Brazilian foreign tax credit and CAP loan issues, reversed its government-favorable holdings on net-loan foreign tax credits. Overall taxpayer victory.	Roger J. Jones



Appellate Court Tax Litigation Experience

Eighth Circuit

CASE	PRINCIPAL ISSUE	STATUS/RESULT	MCDERMOTT LAWYER
<i>North Central Rental & Leasing, LLC v. United States</i> 779 F.3d 738 (8th Cir. 2015)	Whether Taxpayer's exchanges of rental and leasing property were proper like-kind exchanges that qualified for nonrecognition of gain under section 1031.	Eighth Circuit affirmed district court's decision in favor of the government.	Gregory G. Palmer
<i>Norwest Corp. v. Commissioner</i> 69 F.3d 1404 (8th Cir. 1995)	Whether foreign tax credits claimed for Brazilian withholding taxes must be reduced by amount of Brazilian subsidy to borrowers.	Eighth Circuit affirmed Tax Court's decision in the government's favor.	Roger J. Jones
<i>Walgreen, Inc. v. United States</i> 68 F.3d 1006 (7th Cir. 1995)	Recovery period of section 1250 real property.	Seventh Circuit reversed Tax Court and held cost could be recovered over 10 years.	Lydia R.B. Kelley



Appellate Court Tax Litigation Experience

Ninth Circuit

CASE	PRINCIPAL ISSUE	STATUS/RESULT	MCDERMOTT LAWYER
<i>Dorrance v. United States</i> 807 F.3d 1210 (9th Cir. 2015)	Calculation of cost basis of stock received through demutualization.	Ninth Circuit, in issue of first impression, held that taxpayers who sold stock obtained through demutualization could not claim basis in stock for tax purposes.	Laura L. Gavioli
<i>Nakano v. United States</i> 742 F.3d 1208 (9th Cir. 2014)	Whether taxpayer was liable under section 6672 for failing to pay corporation's excise taxes.	Ninth Circuit held for government.	Laura L. Gavioli
<i>Ralphs Grocery Co. v. Commissioner</i> <i>Fred Meyer, Inc. v. Commissioner</i> Nos. 12-72638 and 12-72639 (9th Cir. 2012)	Whether bankruptcy transaction satisfied requirements for a qualified stock purchase eligible for an election under section 338(h)(10).	Taxpayer won in Tax Court; cases dismissed with prejudice by Ninth Circuit.	Roger J. Jones Andrew R. Roberson
<i>Reynolds Properties, L.P. v. Commissioner</i> Nos. 10-72406 and 73376 <i>Amicus Curiae</i>	Whether an understatement of income resulting from an overstatement of basis is an omission from gross income for purposes of the 6-year statute of limitations.	Government conceded case on appeal; taxpayer won.	Roger J. Jones Andrew R. Roberson
<i>UnionBanCal Corp. v. Commissioner</i> 305 F.3d 976 (9th Cir. 2002)	Whether taxpayer was entitled to a deduction for a deferred loss incurred during a related party transaction.	Ninth Circuit affirmed decision in favor of the government.	Paul Dau



Appellate Court Tax Litigation Experience

CASE	PRINCIPAL ISSUE	STATUS/RESULT	MCDERMOTT LAWYER
<i>Intel Corp. v. Commissioner</i> 76 F.3d 976 (9th Cir. 1995)	Source of export income under the “title passage” rule.	Ninth Circuit affirmed Tax Court’s decision in the taxpayer’s favor.	Roger J. Jones

Tenth Circuit

CASE	PRINCIPAL ISSUE	STATUS/RESULT	MCDERMOTT LAWYER
<i>Salman Ranch, Ltd. v. Commissioner</i> 647 F.3d 929 (10th Cir. 2011) <i>Amicus Curiae</i>	Whether an understatement of income resulting from an overstatement of basis is an omission from gross income for purposes of the 6-year statute of limitations.	D.C. Circuit held in favor of government; Supreme Court vacated and remanded and decision entered in taxpayer’s favor.	Roger J. Jones Andrew R. Roberson
<i>Hukkanen-Campbell v. Commissioner</i> 274 F.3d 1312 (10th Cir. 2001)	Whether a portion of a money judgment or settlement paid to a plaintiff’s attorney was income to the plaintiff.	Tenth Circuit held favor of government.	Roger J. Jones
<i>Tele-Communications, Inc. v. Commissioner</i> 104 F.3d 1229 (10th Cir. 1997)	Inclusion of interim period E&P for purposes of section 334(b)(2) (R.M. Smith issue).	Tenth Circuit affirmed Tax Court’s holding in the taxpayer’s favor.	Roger J. Jones
<i>Tele-Communications, Inc. v. Commissioner</i> 12 F.3d 1005 (10th Cir. 1993)	Application of section 1253 to cable television franchises.	Tenth Circuit affirmed the Tax Court’s decision in favor of the taxpayer.	Roger J. Jones



Appellate Court Tax Litigation Experience

Eleventh Circuit

CASE	PRINCIPAL ISSUE	STATUS/RESULT	MCDERMOTT LAWYER
<p><i>Paychex Business Solutions, LLC, PBS of Central Florida, LLC, and PBS of America, LLC</i> No. 18-12773-HH (11th Cir. 2018)</p>	<p>Whether plaintiffs had standing to sue for refunds of FICA taxes and whether plaintiffs were statutory employees for purposes of FICA taxes under 26 U.S.C. 3401(d).</p>	<p>Taxpayer won in district court; case dismissed with prejudice by Eleventh Circuit.</p>	<p>Roger J. Jones Andrew R. Roberson David Fuller Samantha Souza</p>
<p><i>United Parcel Serv. of Am. v. Commissioner</i> 254 F.3d 1014 (11th Cir. 2001)</p>	<p>Whether UPS’s transfer of package insurance program to offshore affiliate should be respected on substance-form grounds.</p>	<p>Eleventh Circuit reversed Tax Court’s decision and held in favor of taxpayer.</p>	<p>Roger J. Jones</p>
<p><i>Citizens & Southern Corp. v. Commissioner</i> 919 F.2d 1492 (11th Cir. 1990) <i>Amicus Curiae</i></p>	<p>Whether taxpayer was entitled to a depreciation deduction under section 167 and the amount of the deduction.</p>	<p>Eleventh Circuit affirmed <i>per curiam</i> the Tax Court’s decision in the taxpayer’s favor.</p>	<p>Roger J. Jones</p>
<p><i>Great Northern Nekoosa Corp. v. Commissioner</i> 180 F.3d 277 (11th Cir. 1999)</p>	<p>Taxpayer claimed that a 1981 transaction (involving reciprocal put and call options) was a completed sale in 1981 so that a portion of a payment in 1989 pursuant to an exercise of the put option was deductible as unstated interest under section 483.</p>	<p>Eleventh Circuit affirmed trial court’s decision in favor of government.</p>	<p>Philip A. McCarty</p>



Appellate Court Tax Litigation Experience

District of Columbia Circuit

CASE	PRINCIPAL ISSUE	STATUS/RESULT	MCDERMOTT LAWYER
<i>Intermountain Ins. Serv. of Vail, LLC v. Commissioner</i> 650 F.3d 691 (D.C. Cir. 2011) <i>Amicus Curiae</i>	Whether an understatement of income resulting from an overstatement of basis is an omission from gross income for purposes of the 6-year statute of limitations.	D.C. Circuit held in government's favor; Supreme Court vacated and remanded and decision entered in taxpayer's favor.	Roger J. Jones Andrew R. Roberson
<i>UTAM, Ltd. v. Commissioner</i> 645 F.3d 415 (D.C. Cir. 2011) <i>Amicus Curiae</i>	Whether an understatement of income resulting from an overstatement of basis is an omission from gross income for purposes of the 6-year statute of limitations.	D.C. Circuit held in government's favor; Supreme Court vacated and remanded and decision entered in taxpayer's favor.	Roger J. Jones Andrew R. Roberson



Supreme Court Tax Litigation Experience

CASE	PRINCIPAL ISSUE	STATUS/RESULT	MCDERMOTT LAWYER
<p><i>United States v. Home Concrete & Supply, LLC</i> 132 S.Ct. 1836 (2012)</p>	<p>Whether an understatement of income resulting from an overstatement of basis is an omission from gross income for purposes of the 6-year statute of limitations.</p>	<p>Taxpayer won in 5-4 decision.</p>	<p>Roger J. Jones Andrew R. Roberson</p>
<p><i>Burks v. United States Commissioner v. M.I.T.A. Partners</i> 566 U.S. 981 (2012)</p>	<p>Whether an understatement of income resulting from an overstatement of basis is an omission from gross income for purposes of the 6-year statute of limitations.</p>	<p>Supreme Court denied petition for certiorari, following <i>Home Concrete</i>.</p>	<p>Laura L. Gavioli Roger J. Jones (<i>amicus</i>) Andrew R. Roberson (<i>amicus</i>)</p>
<p><i>United States v. Home Concrete & Supply, LLC</i> No. 11-139 (Supreme Court 2011) <i>Amicus Curiae</i></p>	<p>Whether an understatement of income resulting from an overstatement of basis is an omission from gross income for purposes of the 6-year statute of limitations.</p>	<p>Amicus brief on behalf of Bausch & Lomb, Inc. in support of granting certiorari for Fourth Circuit case as opposed to Seventh Circuit case; certiorari granted in Fourth Circuit case.</p>	<p>Roger J. Jones Andrew R. Roberson</p>
<p><i>Banks v. Commissioner</i> 543 U.S. 426 (2005)</p>	<p>Whether a portion of a money judgment or settlement paid to a plaintiff's attorney was income to the plaintiff.</p>	<p>Supreme Court reversed Sixth Circuit's decision in taxpayer's favor.</p>	<p>Roger J. Jones</p>
<p><i>Boeing Co. v. United States</i> 537 U.S. 437 (2003)</p>	<p>Whether taxpayer properly allocated and apportioned R&D expenses for commercial airplanes in determining DISC/FSC benefits.</p>	<p>Taxpayer won in district court; Supreme Court ultimately held for the government.</p>	<p>Roger J. Jones</p>



Supreme Court Tax Litigation Experience

CASE	PRINCIPAL ISSUE	STATUS/RESULT	MCDERMOTT LAWYER
<i>Newark Morning Ledger Co. v. United States</i> 507 U.S. 546 (1993). <i>Amicus Curiae</i>	Amortization of intangible assets.	Supreme Court reversed the Third Circuit's holding in favor of the government.	Roger J. Jones